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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )  
 )  
1998 Biennial Regulatory Review -- )  
Review of the Commission's ) MM Docket No. 98-35  
Broadcast Ownership Rules and )  
Other Rules Adopted Pursuant to )  
Section 202 of the Telecommunications )  
Act of 1996 )

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COMMENTS OF  
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## SUMMARY

The passage of 13 years has not eliminated the technical and economic handicaps of UHF stations. Television receivers may have improved and broadcasters have greater rights to carriage on cable systems than they did in 1985; yet, neither of these advances has altered the basic fact that solely by virtue of a UHF's channel's propagation characteristics, UHF signals deteriorate much more quickly over distance and are far more susceptible to variations in terrain than VHF signals. In addition, although mandatory cable carriage has improved UHF stations' audience reach, approximately 35% of television households in the U.S. still do not subscribe to cable. As a result, UHF stations reach far fewer viewers and garner significantly less advertising revenues than their VHF competitors.

The conversion to digital television is unlikely to alleviate the UHF handicap. The DTV allotment scheme is premised on "service replication," meaning that UHF and VHF stations' existing coverage will be replicated to the greatest extent possible in the DTV world. This leaves UHF stations with essentially the same handicap they have operating on their analog channels. There also is no guaranty that broadcasters will have the same rights to mandatory cable carriage of their digital signals as they do with respect to their analog signals. Digital must-carry, then, also will not alleviate the UHF/VHF disparity.

The Commission's evaluation of the UHF discount in this proceeding must take into account not only the economic and technical realities of operating a UHF station, but also the devastating impact that eliminating the discount would have on competition and diversity. Over the last 11 years Telemundo has acquired television stations in key markets serving large numbers of Hispanic households. Ownership of these stations has been critical to the development of Telemundo as a viable competitor to other Spanish-language programmers and television stations airing Spanish-language programming. The Telemundo station group, which

will be the primary outlet for Telemundo network programming in the U.S., similarly will require flexibility in acquiring stations to serve additional key markets. Through the acquisition of UHF stations, the Telemundo station group will be in a strong position to contribute to the growth and expansion of the Telemundo network.

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To:    The Commission

**COMMENTS OF  
TELEMUNDO GROUP, INC.**

Telemundo Group, Inc. ("Telemundo"), by its attorneys, hereby submits its Comments in response to the FCC's *Notice of Inquiry* in the above-captioned proceeding.<sup>1/</sup> Telemundo urges the FCC to retain its ownership rule commonly known as the UHF discount to ensure the continued economic survival of UHF stations and fostering of emerging broadcast networks.

***I. INTRODUCTION.***

The same rationale which supported adoption of the UHF discount in 1985 warrants retaining the discount as the television industry moves toward the 21st century. UHF stations remain at a serious technical and competitive disadvantage to VHF stations. In its *Notice of Inquiry*, the Commission questions whether "improved television receiver designs, as well as the fact that many households receive broadcast channels via cable rather than by over-the-air

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<sup>1/</sup> 1998 Biennial Regulatory Review -- Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, *Notice of Inquiry*, MM Docket No. 98-35, FCC 98-37 (rel. Mar. 13, 1998) ("*Notice of Inquiry*").

transmission" have "corrected" the UHF/VHF disparity and therefore warrant eliminating the discount.<sup>2/</sup> As shown herein, although advances in receiver technology and mandatory cable carriage have allowed UHF stations to improve economically, the physical disparity between UHF and VHF television signals remains and still places UHF stations at a disadvantage vis-a-vis their VHF competitors.

It is likely that this disadvantage will continue upon UHF stations' full transition to digital television. The Commission's suggestion that the conversion to digital television will further "equalize" UHF and VHF stations' signal reach is premature at best and may be inaccurate. Digital television accordingly cannot serve as any basis for modification of the UHF discount.

Retaining the discount also will be critical to the continued growth of emerging broadcast networks like Telemundo. Ownership of UHF stations in key markets has enabled Telemundo to reach a significant number of Hispanic viewers throughout the United States. Although the Telemundo station group will soon be reorganized under separate ownership from the network, the programming relationship between Telemundo network and the stations will continue. Retaining the UHF discount will allow the Telemundo station group to expand its audience reach and thereby enhance competition and diversity in the Spanish-language broadcast market.

## ***II. TELEMUNDO.***

Telemundo is one of two Spanish-language broadcast networks in the United States. The network provides Spanish-language programming 24 hours per day to its owned and operated stations, consisting of eight full power stations and 13 low power television stations, as well as a

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<sup>2/</sup> *Id.* ¶¶ 26, 27.

number of separately-owned affiliates. All but one of Telemundo's owned full power stations operate on UHF channels. The stations are located in the nation's top Hispanic markets -- Los Angeles, New York, Miami, Houston, San Francisco, Chicago, San Antonio and San Juan, Puerto Rico -- covering approximately 85% of all Hispanic households in the United States.

Telemundo's programming is highly diverse consisting of movies, novelas, talk and entertainment shows, variety shows, national and international news, music and sporting events. Over 40% of Telemundo's network programming is produced at the company's studios in Mexico City and Miami and includes the highly-rated news magazine program "Ocurrio Asi," talk shows, "Sevcec" and "El y Ella," and the musical variety program, "Padrismo." The network's owned and operated stations also produce local news and other programming focussing on local needs and interests. Telemundo's owned and operated station in Puerto Rico, WKAQ(TV), produces approximately 26 hours of its own programming weekly, including variety and comedy shows, mini-series, and news and public affairs shows, all directed toward the Puerto Rican audience.

Since commencing network operations in 1987, Telemundo has struggled to establish a firm foothold in the Spanish-language market. Although with the acquisition of stations in key markets, Telemundo has been able to increase substantially its coverage of Hispanic households, the network has experienced significant financial problems. In 1993, the company declared bankruptcy under Chapter 11 of the U.S. Bankruptcy Code. Although the reorganization from bankruptcy was completed in 1994, Telemundo's economic performance has continued to decline. Telemundo's financial problems have been due largely to capital restraints as a result of

the 1994 reorganization and production difficulties encountered in developing quality Spanish-language programming.

To improve its financial performance, the network has pursued a number of strategies including entering into a partnership with Television Azteca, a Mexican television network, to co-produce television programming, and more recently, the sale of Telemundo's network assets to Liberty Media Corporation and Sony Pictures Entertainment Inc. This sale will result in the separate ownership of the Telemundo network and station group. The station group will operate under the name TLMD Station Group, Inc.; however, the stations will continue as affiliates of the Telemundo network, and it is very likely that as additional stations are acquired by the station group, they too will be affiliated with the Telemundo network.

Telemundo's main competitor is Univision Communications, Inc. ("Univision"), the nation's leading Spanish-language network. According to documents filed with the U.S. Securities and Exchange Commission, Univision owns and operates 13 full power television stations, most of them operating on UHF channels, and its affiliates include nine UHF full power stations, giving Univision greater coverage of U.S. Hispanic households than Telemundo. Univision also is carried extensively on cable systems. Univision has historically outperformed Telemundo in audience ratings. According to a recent article in *BROADCASTING & CABLE*, Univision draws more than six times the number of Telemundo's viewers during prime time.<sup>3/</sup> Univision's success has been due largely to its access to high quality programming from Mexico

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<sup>3/</sup> Michael Stroud, *World Cup Kicks up Univision ratings*, *BROADCASTING & CABLE*, July 13, 1998, at 36.



Group Televisa and Venevision, a Venezuelan production company. Univision also produces a significant amount of its own programming which further enhances its competitive position.<sup>4/</sup>

As the Telemundo station group moves toward the next century, it will undoubtedly face new economic and programming challenges, including implementation of digital television, competition with DBS and cable Spanish-language programmers and continued competition from Univision. Telemundo's ability to meet these challenges will be enhanced if it is able to acquire additional stations that can serve as affiliates of the Telemundo network, thereby increasing the network's coverage in key Hispanic markets. Retaining the UHF discount rule will provide the Telemundo station group with the flexibility to make these strategic acquisitions.

### ***III. THE UHF DISCOUNT.***

#### ***A. Background.***

Since 1985, the UHF discount has fostered the economic development of UHF television stations. The FCC adopted the UHF discount in connection with its overall review of the national television ownership rule which at that time provided that an entity could own up to 12 television stations nationwide so long as the stations' aggregate audience reach did not exceed 25% of television households in the U.S.<sup>5/</sup> The Commission applied and continues to apply the UHF discount to determine compliance with the audience limit cap, now 35% of total U.S.

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<sup>4/</sup> *Id.*

<sup>5/</sup> See Amendment of Section 73.3555 of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Stations, Memorandum Opinion and Order, Gen. Docket No. 83-1009, 100 FCC 2d 74 (1985) ("1985 MO&O").

television households.<sup>6/</sup> In calculating a UHF station's audience reach, the Commission attributes to that station only 50% of the audience in its market whereas a VHF station is attributed with 100% of the audience in its market.<sup>7/</sup>

As the Commission stated in its 1985 *MO&O*, the UHF discount's underlying purpose was to address the technical disparity between UHF and VHF stations. It was well-established at that time and, still is, that UHF station signal strength declines more rapidly over distance than VHF station signal strength. Because UHF stations by their very nature are unable to reach as many viewers as VHF stations, the Commission found that the technical disparity created a significant economic disparity, reducing competition among VHF and UHF stations and adversely impacting diversity. The UHF discount, thus, was designed to level the television playing field so that UHF stations would be in a much stronger position to compete with VHF stations. Nothing has changed since that time to indicate that UHF and VHF station coverage has achieved any greater level of parity.

***B. The Same Rationale Underlying Adoption of the UHF Discount Warrants Retaining the Discount.***

The disparities between UHF and VHF stations that existed in 1985 have not changed over the last 13 years. Although economically, due largely to changes in receiver technology and mandatory cable carriage, UHF stations are in an improved position, the playing field vis-a-vis VHF stations remains uneven. Moreover, the cost of operating a UHF station continues to exceed the costs of operating a VHF station. In addition, it is too early in the digital television

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<sup>6/</sup> 47 C.F.R. § 73.3555(e).

<sup>7/</sup> *Id.*

transition to predict its impact on the traditional UHF/VHF disparity. These circumstances warrant retaining the UHF discount.

**1. *Changes in Technology and Cable Carriage Have Not Created a Level Playing Field Among UHF and VHF Stations.***

The last 15 to 20 years have witnessed dramatic changes in the television industry that have benefitted UHF stations. There have been significant advances in television receiver technology making it easier for viewers to receive UHF signals over the air.<sup>8/</sup> In 1997, the United States Supreme Court upheld the constitutionality of the FCC's mandatory cable carriage rules.<sup>9/</sup> Those rules,<sup>10/</sup> adopted by the FCC pursuant to the Cable Television Consumer Protection and Competition Act of 1992,<sup>11/</sup> established the rights of television stations to mandatory carriage on cable systems within their television market. These rights have been critical to ensuring that UHF stations could reach via cable viewers who could not receive UHF stations signals over the air.

Unfortunately, receiver technology and mandatory carriage have not completely solved the basic disparity between UHF and VHF television stations -- the difference in over-the-air signal strength. The fact remains that UHF stations, based on technical disparity alone, do not reach as many viewers with an over-the-air signal as VHF stations. Although an improved television receiver may make it easier for a viewer to receive a UHF station's signal, receiver

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<sup>8/</sup> *Notice of Inquiry* ¶ 26; *Broadcast Television National Ownership Rules, Notice of Proposed Rule Making*, MM Docket Nos. 96-222, 91-221, 87-8, 11 FCC Rcd 19949, 19954, ¶ 12 (1996).

<sup>9/</sup> *Turner Broadcasting System, Inc. v. FCC*, 117 S.Ct. 1174 (1997).

<sup>10/</sup> *See* 47 C.F.R. §§ 76.51-76.70.

<sup>11/</sup> Pub.L.No. 102-385, 106 Stat. 1460 (1992).

technology does not and cannot enhance signal strength or eliminate topographic conditions which significantly weaken UHF signals but have a minimal impact on VHF signals.

Similarly, mandatory cable carriage does not resolve the problem of how a UHF station reaches viewers who do not subscribe to cable. Cable penetration has increased over the past 13 years,<sup>12/</sup> but there remains a substantial number of television households that do not subscribe to cable. Indeed, cable penetration in the United States in 1997 was only 65%.<sup>13/</sup> In the five largest Designated Market Areas ("DMA") in the United States, as defined by A.C. Nielsen, cable penetration is less than or barely exceeds 75%. Cable penetration in the New York, New York DMA is 71%, and in the Los Angeles, California DMA is 63%.<sup>14/</sup> The Chicago, Illinois DMA has a cable penetration of 62%, and the Philadelphia, Pennsylvania DMA has a cable penetration of 76%.<sup>15/</sup> The San Francisco, California DMA has a cable penetration rate of 71%.<sup>16/</sup> Thus, in these five largest markets alone, approximately 25% or more of the television households do not receive cable. By virtue of their inferior signal strength, UHF stations are seriously disadvantaged in delivering a viewable signal to these non-cable viewers.

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<sup>12/</sup> In 1985, cable penetration in the U.S. was 43.7% of U.S. households. *Broadcasting Cablecasting Yearbook 1985* at D-3. Cable penetration increased to 57.1% in 1990. *The Broadcasting Yearbook 1990* at D-3.

<sup>13/</sup> *Broadcasting & Cable Yearbook 1998* at xxxi.

<sup>14/</sup> *Id.* at C-8.

<sup>15/</sup> *Id.*

<sup>16/</sup> *Id.*

**2.      *UHF Stations Continue to Operate at an Economic Disadvantage When Compared to VHF Stations.***

As the technical disparity between UHF and VHF stations has continued, so has the economic disparity. Given their weaker signal strength and inability to reach as many viewers as VHF stations, UHF stations simply do not garner the same revenues or audience share ratings as their VHF competitors. Moreover, the costs of operating a UHF station remain high, exceeding the costs incurred by VHF stations, and placing an additional economic burden on the owners of UHF stations.

The Comments submitted by the National Association for Broadcasters ("NAB") in this proceeding provide persuasive evidence that a "UHF penalty" continues to exist. As outlined in Stephen E. Everett's report, "The 'UHF Penalty' Demonstrated," VHF network affiliates on average receive higher ratings than UHF network affiliates.<sup>17/</sup> For instance, VHF affiliates in all of A.C. Nielsen's DMAs averaged a 9.6 prime-time rating while UHF affiliates in the same markets averaged only a 6.4 rating.<sup>18/</sup> ABC's VHF affiliates averaged a 9.4 prime-time rating in 1997 whereas their UHF counterparts only averaged a 6.8 rating.<sup>19/</sup> Similarly, NBC's VHF affiliates averaged a 9.5 rating whereas NBC's UHF affiliates averaged only a 7.4 rating.<sup>20/</sup> The differences also are consistent across all markets. In the 25 largest DMAs, VHF affiliates earned

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<sup>17/</sup> Stephen E. Everett, Ph.D., "The 'UHF Penalty' Demonstrated," *submitted with the Comments of the National Association for Broadcasters*, MM Docket No. 98-35, July 21, 1998, at 1 ("Everett Study").

<sup>18/</sup> *Id.* This information is based on data compiled by A.C. Nielsen in November 1997. *Id.*

<sup>19/</sup> *Id.* at 2.

<sup>20/</sup> *Id.*

an average 9.9 rating whereas UHF affiliates averaged only a 6.2 rating.<sup>21/</sup> In DMAs ranked 51-100, VHF affiliates garnered an average rating of 9.5 whereas UHF affiliates garnered an average rating of 6.2.<sup>22/</sup>

Financially, VHF stations also outperform UHF stations. As reported in the Comments of NAB,

[g]iven their inherent coverage disadvantages, UHF stations tend to attract smaller audiences than for their VHF counterparts, for the same programming. With these smaller audiences, it easily follows that advertising revenues, pre-tax profits and cash flows should be lower than comparative VHF stations.<sup>23/</sup>

The Fratrik Study submitted by NAB demonstrates that from 1993 through 1996, UHF network affiliates<sup>24/</sup> generated 41.8% to 44.1% of the net revenues, 34.3% to 37.1% of the cash flow, and 19.6% to 24.1% of the pre-tax profits that were generated by VHF affiliates.<sup>25/</sup> The disparity between UHF and VHF economic performance also is demonstrated by an analysis of net revenues, pre-tax profits and cash flow by affiliate type. For instance, in 1996, ABC's UHF affiliates generated only 32.4% of the net revenues, 4.5% of the pre-tax profits, and 24.6% of the cash flow that was generated by ABC's VHF affiliates.<sup>26/</sup> UHF stations affiliated with the Fox network in 1996 earned only 39.5% of the net revenues, 25.5% of the pre-tax profits, and 41.0%

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<sup>21/</sup> *Id.* at 3.

<sup>22/</sup> *Id.*

<sup>23/</sup> Mark R. Fratrik, Ph.D., "A Financial Analysis of the UHF Handicap," *submitted with the Comments of NAB*, MM Docket No. 98-35, July 21, 1998, at 1 (citations omitted) ("Fratrik Study").

<sup>24/</sup> ABC, CBS, Fox and NBC affiliates.

<sup>25/</sup> *Id.* at 2, Figure 1.

<sup>26/</sup> *Id.* at 5, Figure 3.

of the cash flow generated by VHF stations affiliated with the same network.<sup>27/</sup> Thus, even within the larger networks, there is an evident disparity between UHF and VHF stations.

Relevant to the disparities in financial performance, of course, is the dramatic difference in the cost of operating a VHF station as opposed to a UHF station. Because a UHF station, by its very nature, must operate at higher power than a VHF station, and because the higher power requires more electricity and a more powerful transmitter, the costs of operating a UHF station are significantly higher.

In sum, the economic disparities between UHF and VHF stations continue and the evidence demonstrates that the economic disadvantages suffered by UHF stations are a direct result of the UHF band's technical shortcomings.<sup>28/</sup> Because the playing field between UHF and VHF stations remains substantially unbalanced, the Commission must retain the UHF discount.

**3. *The Implementation of Digital Television Will Not Automatically Eliminate the Disparity Between UHF and VHF Stations.***

The Commission's suggestion in the *Notice of Inquiry* that the full transition to digital television ("DTV") will eliminate the need for the UHF discount<sup>29/</sup> is premature at best and

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<sup>27/</sup> *Id.*

<sup>28/</sup> Not surprisingly, given these statistics, the industry continues to view a UHF station as providing an inferior signal. One has only to review Fox's successful attempt in 1994 to affiliate with an increased number of VHF stations, resulting in a termination of affiliation agreements with UHF stations, to discern the industry's position. See Julie A. Zier, *Fog of war engulfs affiliation battles; affiliation of television stations with networks*, BROADCASTING & CABLE, Dec. 5, 1994, at 50 (describing the Fox network's "upgrades" to VHFs in 16 markets and the three major networks' "downgrades" to UHFs in 19 markets); Geoffrey Foisie, *Figuring the pluses, minuses of Fox-New World; Fox Television's affiliation agreement with New World Communications Group Inc.*, BROADCASTING & CABLE, May 30, 1994, at 10 (noting that Fox's affiliation with VHF stations will force one of the other three networks to "suffer from the inferior coverage of a UHF affiliate").

<sup>29/</sup> *Notice of Inquiry* ¶ 27.

cannot support any change in the rule. It is impossible to know at this time whether the conversion to digital television will alleviate the historic UHF/VHF disparity; indeed, given the relatively low DTV power levels assigned to UHF stations, it is quite likely that technical disparities will exist notwithstanding the conversion to DTV. Adding to the uncertainty is the outstanding question of what if any mandatory cable carriage rights DTV stations will have. Until the industry and the Commission have more experience with this new technology, and specifically UHF station coverage vis-a-vis VHF station coverage as well as mandatory carriage rights, the Commission would be ill-advised to base any change in its ownership rules on the possibilities of DTV technology.

*a. The FCC's DTV Rules Do Not Place UHF Stations on an Even Par with VHF Stations.*

The implementation of DTV will not necessarily result in the "equalization" of UHF and VHF coverage areas. First, until the DTV transition is fully underway and completed, it will be impossible for the FCC to determine whether UHF and VHF analog stations operating on a digital channel will have comparable coverage. Although it is true that the majority of stations, whether currently operating on UHF or VHF channels, will operate in the UHF band, until stations are operating with their authorized DTV facilities and this new technology is fully implemented, neither the FCC nor the industry is in a position to evaluate UHF and VHF station coverage.



Second, the FCC's DTV rules are not designed to eliminate the technical disparity between UHF and VHF television stations. The FCC's DTV allotment scheme is based primarily on replication of existing analog service.<sup>30/</sup>

We continue to believe that our service replication proposal, with some modifications, is the appropriate approach for implementation of DTV. We believe that providing DTV allotments that replicate the service areas of existing stations offers important benefits for both viewers and broadcasters. This approach will ensure that broadcasters have the ability to reach the audiences that they now serve and that viewers have access to the stations that they can now receive over-the-air.<sup>31/</sup>

The Commission has recognized that replication of existing UHF station service areas will not equalize VHF and UHF coverage areas. On reconsideration of the *Sixth Report and Order*, the Commission acknowledged "the difficulties that UHF stations may face under the current service replication plan in competing with the higher-powered DTV service of existing VHF stations."<sup>32/</sup> The Commission concluded that additional measures were necessary to reduce the disparities "inherent in the current service replication process."<sup>33/</sup> Accordingly, the Commission modified its DTV rules to permit UHF stations to maximize their DTV coverage and service through power increases and use of beam tilting techniques.<sup>34/</sup> However, while DTV is still in the early

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<sup>30/</sup> *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Sixth Report and Order*, MM Docket No. 87-268, 12 FCC Rcd 14588, 14605, ¶ 29 (1997) ("*Sixth Report and Order*"), on reconsideration, *Memorandum Opinion and Order on Reconsideration of The Sixth Report and Order*, MM Docket No. 87-268, 13 FCC Rcd 7418 (1998) ("*Sixth DTV Reconsideration*"), appeal pending.

<sup>31/</sup> *Sixth Report and Order*, 12 FCC Rcd at 14605, ¶ 29 (emphasis added).

<sup>32/</sup> *Sixth DTV Reconsideration*, 13 FCC Rcd at 7450, ¶ 79.

<sup>33/</sup> *Id.*

<sup>34/</sup> *Id.* ¶¶ 79-85.

stages, there is no guarantee that all UHF stations will be able to take advantage of these opportunities or that increasing power or using beam tilting techniques will result in maximization of UHF service equivalent to VHF station coverage. In short, until UHF DTV stations' coverage can be fully assessed based on real-world experience, there is no basis for the Commission to conclude that the UHF discount is not necessary to ensure UHF/VHF parity.

b. *Mandatory Cable Carriage Is a Virtual Unknown in the DTV Era.*

As noted above, mandatory cable carriage of broadcast stations has been critical to the improved economic status of UHF stations in recent years. However, the rules with regard to cable carriage of DTV signals are yet to be resolved and it is not at all clear what the resolution will be. This ongoing uncertainty is an additional factor that weighs against making any changes to the UHF discount.

To say that digital must-carry is controversial is a gross understatement. The Commission's much-anticipated *Notice of Proposed Rule Making* on digital must-carry was only recently released on July 10, 1998.<sup>35/</sup> The issues raised in the *Must-Carry Notice* are both numerous and complex and include carriage of analog and digital signals during the DTV transition period, compatibility and carriage of multiple digital formats, picture quality standards, and carriage of broadcasters' ancillary services included in the digital broadcast signal. The

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<sup>35/</sup> *Carriage of the Transmissions of Digital Television Broadcast Stations Amendments to Part 76 of the Commission's Rules, Notice of Proposed Rule Making*, CS Docket No. 98-120, FCC 98-153 (rel. July 10, 1998) (the "*Must-Carry Notice*").

broadcast and cable industries are sharply divided over these issues,<sup>36/</sup> and indeed the Commission's *Must-Carry Notice* poses far more questions than solutions.

What is clear is that "must-carry" of DTV signals will take considerable time to resolve. The Commission cannot simply assume that mandatory cable carriage of UHF stations' DTV signals will alleviate UHF signal disparities vis-a-vis VHF stations. The transition to DTV accordingly provides no basis for any changes in the UHF discount.

***C. The UHF Discount is Critical to the Continued Growth of Emerging Broadcast Networks.***

Like other emerging networks, Telemundo's history demonstrates that UHF stations are critical to the development and continued growth of broadcast network programming and competition.

When the Telemundo network commenced operations in 1987, it owned only three full power television stations. Since that time it has acquired five additional stations, giving it eight full power stations, all but one of which operates on a UHF channel, in the top seven Hispanic markets in the country. It has affiliation agreements with approximately 10 full power stations, nearly all operating on UHF channels.

Despite significant competition from Univision, Telemundo's growth over the past 11 years has contributed to the diversity of programming in the United States overall as well as in the Spanish-language programming market. In 1987, Telemundo provided its owned and operated stations and affiliates with only 18 hours of programming per week. Today, and only 11 years later, the network supplies owned and affiliated stations with 24 hours of programming

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<sup>36/</sup> See Chris McConnell and Price Colman, *FCC tackles digital must-carry*, BROADCASTING & CABLE, July 13, 1998, at 8-9.

per day. In addition, Telemundo produces over 40% of the programming offered to stations, all targeted toward Hispanic viewers and including both entertainment and news programming. Telemundo's owned and operated stations also produce local programming targeted specifically to the needs and interests of the communities they serve. In short, the Telemundo network offers a viable second choice of Spanish-language programming to both Hispanic viewers and advertisers targeting Hispanic groups.

The Fox, UPN and WB networks and the new PAXTV network have similarly relied on ownership of or affiliation with UHF stations to "grow" their networks, and in turn have contributed to program diversity and competition. For example, UPN has 27 VHF affiliates and 129 UHF affiliates.<sup>37/</sup> Similarly, Fox has 132 UHF affiliates and 41 VHF affiliates.<sup>38/</sup> In many instances, large group owners of UHF stations have been able to provide these new networks with a significant number of distribution outlets. For instance, Sinclair Broadcasting's recent decision to affiliate a number of its stations with the WB network has enabled WB to increase substantially its affiliate base.<sup>39/</sup> The PAXTV network, scheduled for launch in August 1998, also will rely on its owned and operated stations, the majority of which are UHF, to distribute its new network programming.

It is undisputed that the development of these emerging networks has contributed to competition among the networks and the diversity of network programming. For example,

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<sup>37/</sup> UPN, <<http://www.upn.com/aboutsite/affiliates.html>>

<sup>38/</sup> Twentieth Century Fox, <<http://www.foxworld.com/usaff.html#al>>

<sup>39/</sup> Steve McClellan, *WB woos and wins Sinclair*, BROADCASTING & CABLE, July 21, 1997, at 4.

Fox has increased the level of competition among the networks for the rights to air professional sports programming. Both UPN and WB have increased the hours, types and quality of programming available to viewers today.<sup>40/</sup> PAXTV will add to this diversity with its new family-oriented programming schedule. In a similar fashion, the Telemundo network will be contributing to diversity and competition in the Spanish language programming market by introducing a group of original programs including Spanish-language versions of successful American TV programs<sup>41/</sup> and building on the synergies of its future programming partnership with Sony and Liberty.

Retaining the UHF discount will similarly provide the Telemundo station group with the long term flexibility to acquire additional stations that can serve as strategic outlets for Telemundo network programming, thus enhancing both the diversity of programming available to Hispanic viewers and the level of competition among Spanish-language broadcast and cable networks.

#### ***IV. CONCLUSION.***

Telemundo wholeheartedly supports the Commission's efforts to undertake this challenging review of the broadcast ownership rules. As set forth in the *Notice of Inquiry*, the Commission's action in this proceeding must be guided by its traditional dual goals of fostering

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<sup>40/</sup> See Michael Stroud, *Valentine vows improvement; United Paramount Network*, BROADCASTING & CABLE, June 15, 1998, at 45 (discussing UPN's efforts to target various demographic groups); Michael Stroud, *WB tops UPN season to date, Warner Brothers*, BROADCASTING & CABLE, Feb. 23, 1998, at 41 (discussing WB's programming designed to reach teenage audiences).

<sup>41/</sup> *Naples Daily News*, <<http://www.naplesnews.com/today/florida/d277992a.htm>>, *Telemundo tries TV favorites with Spanish flavor*, June 17, 1998.

diversity and competition while at the same time ensuring that its rules reflect the economic realities of the marketplace. Those goals will best be realized if the FCC retains the UHF discount both to reflect the continuing physical and economic disparity between UHF and VHF stations and to encourage the continued growth and development of emerging broadcast networks like Telemundo.

Respectfully submitted,

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